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	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
	10/664,442	09/19/2003	Kazutoshi Kaizuka	45144-00042	4509	
	759	90 03/13/2006		EXAMINER		
	Squire, Sander	rs & Dempsey L.L.P	ELHILO, EISA B			
	14th Floor 801 S. Figueroa Street			ART UNIT	PAPER NUMBER	
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	Los Angeles, C	A 90017-5554	1751			
			DATE MAILED: 03/13/2006			

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No. 10/664,442		Applicant(s)  KAIZUKA, KAZUTOSHI					
							Office Action Summary	Examiner	
		Eisa B. Elhi		1751	<u> </u>				
Period fo	The MAILING DATE of this communication app or Reply	pears on the	cover sheet with the	correspondence a	ddress				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).									
Status									
1)	) Responsive to communication(s) filed on 09 January 2006.								
2a)⊠	This action is <b>FINAL</b> . 2b) This	s action is no	n-final.						
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is								
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.								
Disposition of Claims									
4) 🛛	Claim(s) 1-7 is/are pending in the application.								
,	4a) Of the above claim(s) is/are withdrawn from consideration.								
5)	5) Claim(s) is/are allowed.								
6)⊠	6)⊠ Claim(s) <u>1-7</u> is/are rejected.								
7)	Claim(s) is/are objected to.								
8)□	Claim(s) are subject to restriction and/o	or election re	quirement.						
Applicati	on Papers								
9)	The specification is objected to by the Examine	er.							
10)	10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.								
	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).								
11)	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
Priority (	ınder 35 U.S.C. § 119								
,—	12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:								
	1. Certified copies of the priority document	ts have beer	received.						
	2. Certified copies of the priority documents have been received in Application No								
	3. Copies of the certified copies of the priority documents have been received in this National Stage								
	application from the International Bureau (PCT Rule 17.2(a)).								
* See the attached detailed Office action for a list of the certified copies not received.									
Attachmen			,, <u> </u>	(DTG 115)					
· · ==	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948)		4) Interview Summa Paper No(s)/Mail						
3) Infor	mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) or No(s)/Mail Date	)		Patent Application (P1	「O-152)				

## **DETAILED ACTION**

- 1 This action is responsive to the amendment filed on January 9, 2006.
- Objection of claims 2, 4 and 7 is withdrawn because of the applicant's amendment.
- The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,54,791 B1) in view of Roller (US 4,857,306), is maintained for the reasons set forth in the previous office action mailed on September 8, 2005.

## Response to Applicant's Arguments

Applicant's arguments filed 1, 9, 2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Roller (US' 306), Applicant argues that there is no suggestion or motivation in either Dias or Roller to add a poly-element material to a water-based hair dye because the problems asserted to be solved by the Dias and Roller references, either singly or combined, are entirely independent from those solved by Applicant's invention.

The examiner respectfully disagrees with the above argument because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "In re Heck, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), cert. denied, 493 U.S. 975 (1989). In

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this case Dias et al. (US' 791 B1) as a primary reference suggests the use of metallic and metal dyes in a dyeing composition (see col. 41, line 28). Roller as a secondary reference clearly teaches a cosmetic composition comprising tourmaline compound (see col. 2, lines 3-7 and line 35) and wherein the composition also comprises dyes or pigments which are intended to place colored accents on the wears' hairstyle (see col. 1, lines 8-10). Therefore, there is a sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the tourmaline compound as taught by Roller in the dyeing composition of Dias et al., to arrive at the claimed invention with the reasonable expectation of success for improving the dyeing properties of the composition.

Further, Applicants have not shown on record the criticality of the dyes in a combination with silicon dioxide based poly-element minerals in the claimed composition over the composition of the closest prior art of record.

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zisa Elhilo

Primary Examiner

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March 6, 2006